

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
PHILIP E. ENGEL and)	CASE NO. 05-60172 JPK
JUDITH K. ENGEL,)	Chapter 13
)	
Debtors.)	

ORDER FOR FINAL EVIDENTIARY HEARING

On June 22, 2005, the debtors, by counsel, filed an Objection to Claim with respect to the proof of claim of Wells Fargo Bank. Notice of this objection was properly served upon the claimant at the claimant's address; however, no response to the objection or request for hearing with respect thereto was filed by the claimant.

Although the creditor did not respond, the objection apparently seeks to deny the entire amount of the claim of this claimant, which is secured by a mortgage interest in property which presumably the debtor wishes to retain. The circumstances of this claim objection demonstrate one of the more difficult issues faced by a court with respect to the consumer mortgage credit claims filed in Chapter 13 cases. Many of the claims do not have sufficient information to identify the manner of calculation of the claim itself, or of an arrearage asserted by the claim. It is the Court's experience as well that many secured creditors do not respond to debtor's or debtor's counsel's request for information concerning the components or computation of claims. Additionally, because of the game of musical chairs now played in the consumer residential finance industry with respect to assignment of debts for collection purposes and/or sale of the debt obligations themselves, it is often very difficult, if not impossible, to obtain information from a party having it as to the manner in which an arrearage was actually calculated, or as to the manner in which the amount of the claim was derived.

The crux of the problem is that pursuant to 11 U.S.C. § 502(a) and Fed.R.Bankr.P. 3001(f), the proof of claim is "*prima facie* evidence of the validity and amount of the claim".

Thus, in the parlance of evidentiary burdens, the proof of claim satisfies the creditor's "burden of production" with respect to the indebtedness stated in it, and it is then up to the objectant to present evidence sufficient to overcome the claimant's burden of production. However, if and when the objectant does submit sufficient evidence to overcome the "*prima facie* validity" of a proof of claim, the ultimate burden of establishing the claim rests on the creditor/claimant, not on the debtor/objectant.

In cases such as this, it is pointless to require the debtors to do anything more than they have done to get the creditor's attention. Additionally, denial of this claim will not in any manner affect the legitimacy of the lien interests of the creditor in the debtors' property, and thus merely denying this claim and not paying it in the Chapter 13 will leave the debtors with a lien for whatever the amount of the indebtedness owed on the date of the petition was on their property after completion of their case. The Court deems the most appropriate procedure to be to schedule a hearing on the debtors' objection to allow both the creditor and the debtors to present evidence as to the amount of the arrearage, and the amount of the claim itself.

IT IS ORDERED that a hearing on the debtors' objection to claim #1 of Wells Fargo Bank will be held on **December 9, 2005, at 1:00 P.M. THIS IS A FINAL EVIDENTIARY HEARING: THE AMOUNT OF THE ARREARAGE CLAIM AND OF ITS COMPONENT CHARGES, AND THE AMOUNT OF THE TOTAL CLAIM OF THE CREDITOR, WILL BE FINALLY DETERMINED AT THIS HEARING. IN THE EVENT THAT THE DEBTORS SUBMIT EVIDENCE DEEMED BY THE COURT SUFFICIENT TO REBUT THE ASSERTED CLAIM AMOUNT STATED IN THE CREDITOR'S CLAIM, THE AMOUNT OF THAT CLAIM, AND ITS COMPONENT PARTS, WILL BE DETERMINED ON THE BASIS OF THE DEBTORS' EVIDENCE, INCLUDING THE AMOUNT OF ANY ARREARAGE CLAIM – AND THE AMOUNT OF THE CREDITOR'S CLAIM WILL BE THE AMOUNT SO ESTABLISHED, AND UPON COMPLETION OF THE DEBTORS' PLAN, THE BALANCE OF INDEBTEDNESS OWED TO**

**THE CREDITOR SHALL BE ADJUSTED TO REFLECT THE COURT'S DETERMINATION OF
THE AMOUNT OF THE CREDITOR'S CLAIM.**

Dated at Hammond, Indiana on November 4, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtors, Attorney for Debtors

Trustee, US Trustee

Wells Fargo Bank MN, c/o Litton Loan, 4828 Loop Central Dr., Houston TX 77081